

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

76-1421

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA,

Appellee,

v.

LOUIS WATSON,

Appellant.
-----X

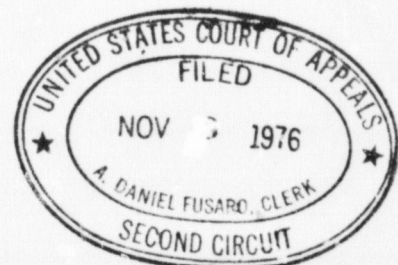
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PJS

APPENDIX TO BRIEF FOR
APPELLANT LOUIS WATSON

Appeal from A Judgment of
Conviction In The United
States District Court For
The Southern District Of
New York

Howard L. Jacobs, P.C.
401 Broadway
New York, New York 10013
Attorney for Appellant
Louis Watson

Howard L. Jacobs,
Donald E. Nawi,
Of Counsel



PAGINATION AS IN ORIGINAL COPY

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ES DISTRICT COURT - CRIMINAL DOCKET

Felony ☐ JUDGE/Assigned Trial
 Offense ☐ MAGISTRATE 0859 • U. S. vs. **WATSON, LOUIS KENNETH**
 manner ☐ 0208 1 Disp./Sentence
☐ District Office

Case Filed
 Day Mo. Yr. Docket No. Def
 31 12 75 1267 01
 No. of Defdnts 01

ARGES
 U. S. CODE SECTION
 18:2113(a)
 18:2113(d)

OFFENSES

Bank robbery.
 Use of firearm dur. bank robbery.

COUNTS

1
 2

MAGR. CASE NO.

BAIL RELEASE
☐ Personal Recog.
☐ Denied ☐ Unsecured Bond
 AMT ☐ Conditional Release
 Set (CDO) ☐ 10% Deposit
☐ Surety Bond
☐ Collateral
☐ Bail Not Made
☐ 3rd Party Custody
☐ Bail Status Changed
☐ PSA
 (See Docket)

U.S. Attorney or Asst.

Richard J. Hoskins
 (212) 791-1919

Defense: ☐ CJA, ☐ Ret; ☐ Waived, ☐ Self, ☐ None ☐ Other, ☐ PD, ☐ CD

ARREST

12-15-75
 U.S. Custody
 Began on Above
 Charges

☐ High Risk
 Defn. &
 Date Design'd

INDICTMENT

Information ☐

12-31-75

Waived ☐

Superseding
☐ Indict/Info ☐

☐ Prosecution Deferred

ARRAIGNMENT

1st Plea

3-29-76

Final Plea

Trial Set For

☒ Not Guilty☐ Nolo☐ Not Guilty☐ Nolo☐ Guilty

TRIAL

Voir Dire ☐Trial Begn ☒

7-19-76

Trial Ended

7-23-76

SENTENCE

Disposition

7-23-76

9-12-76

☒ Convicted☐ Acquitted☐ Dismissed☐ Nolo/Discontinued☒ On All Charges☐ On Lesser Offenses☐ WOP; ☐ Two☐ Nolo/Discontinued

Search Warrant

Issued

Return

Summons

Issued

Served

Arrest Warrant

COMPLAINT

OFFENSE

(In Complaint)

DATE

INITIAL/No.

INITIAL

APPEARANCE

PRELIMINARY

EXAMINATION

OR REMOVAL

HEARING

☐ Waived☐ Not Waived

Tape No.

INITIAL/No.

Date

Scheduled

Date

Held

☐ Intervening☐ Indictment

OUTCOME

☐ Dismissed☐ Held for☐ District CJ☐ Held to Answer to U. S. District Court

AT:

Magistrate's Initials

☐ Exonerated☐ To Transferee

District

Show last names and suffix numbers of other defendants on same indictment/information

V. Excludable Entry

(a) (b) (c) (d)

DATE

PROCEEDINGS

12-31-75 Filed indictment.

3-29-76 Filed Writ of H/C ad Pros. issued and returned April 5, 1976.
 Deft. does not appear (No Atty.). Court directs entry of
 not guilty plea. Will appear on Writ, further date.
 Case assigned to Ward, J... Bryan, J.

4-15-76 Filed writ of H/C Ad pros. Writ returned unexecuted.

04-22

06-02-76

Filed the following papers from the magistrate.
 Docket sheet.
 Criminal complaint, S.D.N.Y.
 Warrant of arrest.

6-9-76 Filed affid for writ of Habeas corpus Ad Prosequendum Writ issued ret 6-16-76

6-16-76 Deft (writ) present Court directs entry of a not guilty plea. 10 days
 for motions .Hearing adj to June 22, 1976 at 3:00 P.M....Ward, J.

-OVER-

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OPPOSITE THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE
 DELAYED ENTRY REMAINING "SPEEDY TRIAL ACT"

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
6-22-76	Deft (produced on a writ) Directed to go to Magistrate for appointment of an attorney. P.T.C. adj to July 1, 1976 at 4:30 P.M....Ward, J.				
6-28-76	Filed govt's notice of readiness for trial on or after 6-28-76				
6-30-76	Filed CJA Form #23 financial affid.				
7-1-76	Deft (produced on a writ) W/A/P P.T.C. held & adj to 7-15-76 at 3:30 P.M.....Ward, J.				
7-15-76	PTC held Trial set for 7-19-76 this case consolidated with 76 CR 152 for trial purposes only....Ward, J.				
7-21-76	Filed Deft's Memorandum of Law in support of motions to Dismiss indictment and suppress statements.				
7-20-76	Filed Defts affdvt & Notice of Motion for an order dismissing the indictment & suppressing any & all statements.				
7-20-76	Filed MEMO ENDORSEMENT on the above Notice of Motion filed 7-20-76 Motion argued and disposed of as follows: (a) and (b) - decision reserved until conclusion of trial; (c) - denied in accordance with oral decision rendered in open Court. It is so ordered.....WARD, J. (m/s 7-23-76)				
7-20-76	Filed Govt's affdvt & Notice of Motion or an order directing that indictments 75 CR 1267 & 76 CR 152 be tried together. (Entered on 76 CR 152)				
7-20-76	Filed MEMO ENDORSEMENT on the above Notice of Motion that the above two indictments be tried together. Motion denied in accordance with oral decision rendered in open Court. It is so ordered.....WARD, J. (Ent. on 76 CR 152) m/s 7-23-76.				
7-22-76	Filed Govt's Supplemental Requests to Charge. (Ent. on 76 CR 152)				
7-19-76	Deft, with Atty Pres, produced on a Writ. JURY Trial begins.				
7-20-76	TRIAL continued.				
7-21-76	Trial continued.				
7-22-76	Trial concluded. Jury deliberating.				
7-23-76	Jury deliberating. Verdict, GUILTY as charged. P.S.I. Ordered. Sentence date 9-7-76 at 2:30 PM.....WARD, J.				
8-12-76	Filed MEMO ENDORSEMENT on Govt's affdvt & Notice of Motion that Indictments Number 75 CR 1267 & 76 CR 152 be tried together. Motion GRANTED in accordance with oral decision rendered in open Court on July 19, 1976. The ORDER of ENDORSEMENT dated July 19, 1976 is VACATED. IT IS SO ORDERED....WARD, J. (Copy to AUSA)				
8-16-76	Filed Affdvt of Allen R. Bentley, A.U.S.A., in opposition to Deft's motion to Dismiss the Indictment.				
7-16-76	Filed affdvt of Allen R. Bentley, A.U.S.A., for a Writ of Habeas Corpus for one Raymond L. Johnson, Jr., Writ issued - Ret: 7-19-76. (Ent. in 76 CR 152)				
8-16-76	Filed affdvt of Allen R. Bentley, A.U.S.A., for Writ of Habeas Corpus for Deft. Writ issued - Ret: 9-17-76.				
8-18-76	Filed Govt's Memorandum of Law in opposition to Deft's motion to dismiss the Indictment.				
8-17-76	Filed Deft's affdvt for & Order for a Writ directed to the Warden of the M.C.C. - Writ satisfiedWARD, J.				
9-16-76	Filed Judgment & Commitment Order: Deft is hereby committed to the custody of the Atty General for imprisonment for a period of TEN (10) YEARS on COUNT #1; Imposition of Prison Sentence on COUNT #2 is suspended and Deft is placed on probation for a period-period of ONE (1) DAY. Said period of probation to be served consecutively to term of imprisonment on COUNT #1. If permitted by law Deft to serve term concurrently with State				
(Cont'd on Page #3)		(a)	(b)	(c)	(d)
		Interval (per Section (1))	Start Date End Date	Ltr. Code	Total Days

D. C. 110 Re Civil Docket Continuation

DATE	PROCEEDINGS
	(J&C Cont'd) sentence. Deft to receive credit for time already served. REMANDED.....WARD,J.
9-24-76	Fld affid & notice of motion for issuance of subpoena for the following named witness Michael D'nielsMotion granted nunc pro tunc 9/23/76 Ward,J.
9-23-76	Fld notice of appeal from judgment entered 9-16-76 (copy to U.S. Atty- mailed copy to deft

RJH:wp

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

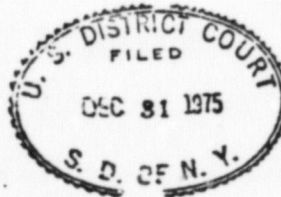
LOUIS KENNETH WATSON,

Defendant.

75 CRIM. 1267

INDICTMENT

75 Cr. 2



COUNT ONE

The Grand Jury charges:

On or about June 5, 1975, in the Southern District of New York, LOUIS KENNETH WATSON, the defendant, did unlawfully, wilfully and knowingly, by force, violence and intimidation, take and attempt to take from the person and presence of another, property and money in the approximate amount of \$12,244.00, belonging to and in the care, custody, control, management and possession of the First National City Bank, 334 Fifth Avenue, New York, New York, a bank the deposits of which were insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Sections 2113(a) and 2.)

COUNT TWO

The Grand Jury further charges:

On or about June 5, 1975, in the Southern District of New York, LOUIS KENNETH WATSON, the defendant, unlawfully, wilfully and knowingly, in committing and attempting to commit the offense set forth in Count One hereof, did assault and put in jeopardy the lives of persons by the use of a dangerous weapon and device, to wit, a firearm.

(Title 18, United States Code, Sections 2113(d) and 2.)

Donald E. Burns Jr.
FOREMAN

Thomas J. Cahill
THOMAS J. CAHILL
United States Attorney

MICROFILM

DEC 31 1975

Remanded to custody of the Southern District of New York, New York, for the purpose of being served with process.

(A)

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2 CHARGE OF THE COURT

3 Ward, J.

4
5 THE COURT: Ladies and gentlemen, we now come
6 to that stage of the case where the evidence is in, the
7 lawyers have presented their arguments, and you are about
8 to do your part in the administration of justice, which is
9 to pass upon and to decide the fact issues.

10 You and you alone are the sole and exclusive
11 judges of the facts. You pass upon the weight of the
12 evidence. You determine the credibility of witnesses.
13 You resolve such conflicts as there may be in the evidence,
14 and you draw such reasonable inferences as may be warranted
15 by the testimony or exhibits in the case.

16 My function at this point is to instruct you
17 as to the law which is applicable to the case.

18 As I indicated in my preliminary remarks, it
19 is your duty to accept the law as I state it to you in
20 these instructions and to apply it to the facts as you
21 find them.

22 The logical result of that application of the
23 law to the facts is the verdict in the case.

24 With respect to any fact matter, it is your
25 recollection and yours alone that governs. Anything that

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2 counsel, either for the Government or the defense, may
3 have said with respect to matters in evidence, during
4 the trial in the form of questions, in colloquy with the
5 Court, in argument or in summation, is not evidence and is
6 not to be substituted for your own recollection of the
7 evidence. So, too, anything I may have said during the
8 course of the trial, or may refer to during the course
9 of these instructions, as to any factual matter in evidence
10 is not evidence and is not to be taken in place of your
11 own recollection of the evidence.

12 Testimony and exhibits to which the Court
13 sustained an objection, or which were ordered stricken
14 from the record, do not constitute evidence and must not
15 be considered by you.

16 The case must be decided by you upon the
17 evidence, that is, the sworn testimony of the witnesses,
18 any stipulations entered into between counsel, and
19 such exhibits as were received in evidence.

20 I mentioned stipulations. A number of
21 stipulations were entered into by the defendants, their
22 attorneys, and the Government. These stipulations
23 pertained to such matters as Federal Deposit Insurance
24 Company insurance of the bank in question. That was
25 Government's Exhibit 61. The losses to the bank as a

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2 result of the events on June 5, 1975. That was
3 Government's Exhibit 62. The numbers worn by Mr. Watson
4 and Mr. London in the lineup. That was Government's
5 Exhibit 63. The identification of two photographs as
6 photographs of Mr. London; Government's Exhibit 64.
7 Fingerprint analysis and lack of identifications at the
8 lineup. That was Defendant Watson's Exhibit E.

9 These stipulations are the equivalent, for
10 your purposes, of live testimony to the same effect, and
11 you may consider the facts stipulated in your deliberations.

12 Should you wish to hear any of the testimony
13 or any part of my charge, you may request that any portion
14 of the testimony or any portion of my charge be read
15 back to you. You will do this by sending a note from
16 the jury room making the request. You will then be
17 brought back into the courtroom and whatever you have
18 requested will be read to you.

19 Should you wish to see the two indictments
20 or any exhibit or exhibits in evidence, whatever you
21 request will be sent into the jury room upon your asking
22 for it.

23 As I have indicated, you will communicate
24 with the Court by note.

25 The charges against the defendants on trial

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1 before you, Louis Kenneth Watson and Willie London,
2 are contained in two indictments. I instruct you that
3 the indictments are merely accusations. They are charges.
4 They are no evidence or proof of a defendant's guilt.
5 Both defendants have pleaded not guilty. Therefore,
6 the Government has the burden of proving each and every
7 element of the charges against each defendant beyond
8 a reasonable doubt. It is a burden that never shifts
9 and remains upon the Government throughout the entire
10 trial.
11

12 A defendant does not have to prove his
13 innocence. On the contrary, each defendant is presumed
14 to be innocent of the accusations contained in the
15 indictment. The presumption of innocence was in the
16 defendants' favor at the start of the trial, continued
17 in their favor throughout the trial, is in their favor
18 even as I instruct you now.

19 It remains in their favor during the course
20 of your deliberations in the jury room. It is removed
21 only if and when you are convinced that the Government
22 has sustained its burden of proving the guilt of a
23 defendant beyond a reasonable doubt.

24 What is a reasonable doubt? It is a doubt
25 based on reason which arises from the evidence or lack of

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evidence in the case. It is a doubt that appeals to your reason, to your judgment, to your common understanding and your common sense, such as would cause prudent men to hesitate to act in matters of importance to themselves.

Reasonable doubt is not caprice or whim or speculation. It is not a doubt that you might conjure up to avoid the performance of an unpleasant duty. It is not sympathy for a defendant.

It is not necessary for the Government to prove the guilt of a defendant to a mathematical certainty, or beyond all possible doubt. If that were the rule, few people, however guilty they might be, would ever be convicted. It is practically impossible for a person to be absolutely and completely convinced of any controverted fact which, by its nature, is not susceptible of mathematical certainty.

In consequence, the law is such that in a criminal case it is enough to convict if proof of a defendant's guilt be established beyond a reasonable doubt, not beyond all possible doubt.

Each indictment in this case -- and there are two indictments, one naming Mr. London and one naming Mr. Watson -- contains two counts or charges against the

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2 defendant named in the indictment.

3 Count 1 of Indictment 75 Cr. 1267 charges
4 that on or about June 5, 1975, the defendant, Louis
5 Kenneth Watson, by force, violence and intimidation,
6 took or aided and abetted others in taking from the person
7 and presence of another approximately \$12,244 in funds of the
8 First National City Bank, the deposits of which were
9 then federally insured.

10 Count 2 of that indictment charges that on
11 the same date, in the course of committing the offense
12 alleged in count 1, the defendant Louis Kenneth Watson
13 assaulted and put in jeopardy the lives of other
14 persons by use of a firearm, or aided and abetted others
15 in so doing.

16 Count 1 of Indictment 76 Cr. 152 charges
17 that on or about June 5, 1975, the defendant Willie London,
18 by force, violence and intimidation, took or aided and
19 abetted others in taking from the person and presence of
20 another approximately \$12,244 in funds of the First
21 National City Bank, the deposits of which were then
22 federally insured.

23 Count 2 of Indictment 76 Cr. 152 charges
24 that on the same date, in the course of committing the
25 offense alleged in count 1, the defendant Willie London

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2 assaulted and put in jeopardy the lives of other persons
3 by use of a firearm, or aided and abetted others in
4 so doing.

5 I will explain the legal meaning of "aiding
6 and abetting" in a few moments.

7 The defendants are each charged in count 1
8 of the respective indictments with having violated a
9 federal statute, specifically, Section 2113(a) of
10 Title 18, United States Code, which provides in
11 pertinent part:

12 "Whoever, by force and violence, or by
13 intimidation, takes or attempts to take from the person
14 or presence of another any property or money or any other
15 thing of value belonging to or in the care, custody,
16 control, management, or possession of any bank" --

17 I close quotes and now interpolate.

18 -- is guilty of an offense.

19 In order to find a defendant guilty on count 1,
20 you must find each of the five following elements beyond
21 a reasonable doubt:

22 First, that on or about June 5, 1976 the
23 First National City Bank, 334 Fifth Avenue, New York,
24 New York, was a bank the deposits of which were insured
25 by the Federal Deposit Insurance Corporation.

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Second, that on or about June 5, 1975, the defendant you are considering took money from the bank which belonged to or was in the care, custody, control, management or possession of the bank, or that he aided and abetted others to do so.

Third, that the money was taken from the person or presence of another.

Fourth, that this taking was accomplished by force and violence, or by intimidation. And

Fifth, that the defendant you are considering wilfully did the act or acts charged.

Section 2113(f) of Title 18, United States Code, another federal statute, contains the following definition of the term "bank" as used in the statute which I cited a moment or two ago:

"As used in this section, the term 'bank' means any bank the deposits of which are insured by the Federal Deposit Insurance Corporation."

The parties have stipulated that the First National City Bank was insured by the Federal Deposit Insurance Corporation on June 5, 1975. Such evidence, if accepted by you, is sufficient to warrant your finding that the first element of count 1 has been proved.

The second and third elements are reasonably

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2 simple and, aside from my restating them, require no
3 further elaboration.

4 You will recall the second element was that
5 on or about June 5, 1975 the defendant you are considering
6 took money from the bank which belonged to, or was in the
7 care, custody, control, management or possession of,
8 the bank, or that he aided and abetted others to do so.

9 The third element is that the money was taken
10 from the person or presence of another.

11 I suggest that these elements are clear.
12 They contain with them, of course, a key question for you
13 to consider, which is whether or not the defendant you are
14 considering, and you must consider each defendant separately,
15 was involved in the bank robbery which all of the parties
16 indicate did in fact take place at the First National
17 City bank on June 5, 1975.

18 So crucial here is whether or not the
19 defendant you are considering has been proved beyond a
20 reasonable doubt to have participated in that occurrence.

21 Turning to the fourth element, which is
22 that the taking of the money must have been accomplished
23 by force and violence, or by intimidation, I charge you
24 that the Government is not required to show that force
25 and violence were actually used against anyone, if it

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proves beyond a reasonable doubt that the taking was the result of intimidation, that is, the result of placing another person or persons in fear.

Intimidation may be established by proof of circumstances that are normally and reasonably calculated to arouse fear in the ordinary run of human beings. So if it happened that some extraordinarily timid person was put in fear by some sort of words or actions that would not normally frighten anyone, this would not be the kind of an intimidation with which the statute is concerned.

On the other hand, if the proof shows conduct by a defendant which would normally be expected to generate fear, then it is not necessary that those affected should actually have experienced some terror or panic or hysteria.

The question, in short, in this respect is an objective one. It is whether the Government has sustained its burden of showing conduct of the accused which was of such a nature as to be a sensible and expectable basis for the creation of fear.

Before you can convict a defendant of either count, you must find beyond a reasonable doubt that the defendant you are considering acted knowingly and wilfully.

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2 An act is done knowingly if it is done voluntarily and
3 purposefully, and not because of mistake, accident, mere
4 negligence, or any other innocent reason. An act is
5 wilful if it is done knowingly, deliberately and with
6 a bad motive or purpose.

7 In determining whether a defendant has acted
8 knowingly and wilfully, it is not necessary for the
9 Government to establish that the defendant knew that he
10 was breaking any particular law or any particular rule.
11 Knowledge and wilfulness of a defendant need not be proved
12 by direct evidence. Like any other fact in issue, it
13 may be established by circumstantial evidence.

14 Here, as in other phases of this case, the
15 significant fact is the defendant's state of mind. It is
16 obviously impossible to ascertain or to prove directly
17 the operation of a defendant's mind, because you cannot
18 look into a person's mind and see what his intentions
19 are or were. But the proof of the circumstances surrounding
20 the transaction may well supply an adequate and convincing
21 basis for a finding that the defendant acted wilfully.

22 The actions of a man must be set in their
23 time and place, just as the full meaning of a word is
24 commonly understood only in its relation to other words
25 in the sentence or its context. So the meaning of a

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particular act or conduct may depend upon the circumstances surrounding it.

In determining this issue, you are entitled to consider any statements made and acts done or committed or omitted to be done by the defendant, and all facts and circumstances in evidence which may aid you in determining his state of mind.

I turn now to count 2.

The defendants are each charged in count 2 of the respective indictments with violating another federal statute, Section 2113(d) of Title 18, United States Code, which provides in part that "whoever in committing"-- and I interpolate -- a robbery of a bank insured by the federal government -- "assaults any person or puts in jeopardy the life of any person by the use of a dangerous weapon or device" -- and I interpolate again -- is guilty of an offense.

In order to find a defendant guilty on count 2, you must find that the defendant you are considering committed the crime charged in count 1. So you must first determine whether or not the defendant committed the crime charged in count 1.

If you find that he did not, you stop right there. If you find that he did, then you go on to

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2 consider count 2.

3 In addition to finding that the defendant you
4 are considering committed the crime charged in count 1,
5 you must find also beyond a reasonable doubt that the de-
6 fendant in so doing either assaulted one or more persons,
7 or by the use of a dangerous weapon or weapons, to wit,
8 a firearm, put in jeopardy the lives of one or more
9 persons.

10 Count 2 thus requires a finding either

11 (1) that there was an assault; or

12 (2) that the lives of one or more persons
13 were placed in jeopardy by the use of a dangerous weapon
14 or weapons.

15 It is not essential to find both an assault
16 and an endangering of lives by use of such weapons.
17 In considering this, you will have in mind and undertake
18 to remember and apply the legal definition of the word
19 "assault."

20 That word is defined to refer to an unlawful
21 attempt or threat to apply force and violence to inflict
22 bodily injury when the attempt or threat is coupled with
23 an apparent present ability to carry it out, such as to
24 arouse fear in the intended victim that he would be subject
25 to immediate physical injury.

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An assault, as it is defined in law, may be committed without actual touching or striking or doing bodily harm to the person in question. For example, a flourishing or pointing of a pistol or gun at another person for the purpose of putting that other person in fear is sufficient to constitute an assault.

I also mentioned to you a moment ago that even if you find no assault in connection with count 2 this count may be established if you find that the lives of one or more people were put in jeopardy by the use of a dangerous weapon. To justify such a finding in this case, you must be convinced beyond a reasonable doubt that the accused, or someone he aided and abetted, carried one or more firearms which were drawn and loaded.

It is not essential to such a finding that there be direct evidence that shows this firearm was in fact loaded. If a person is engaged in a robbery and displays or points a gun to insure his demand and intends to produce a fear in a person or persons, you are permitted to infer from such facts that the gun was loaded and capable of inflicting the deadly injury threatened by the one who employed it.

Of course, in considering the evidence on count 2, you must also find that defendant you are

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1 considering acted wilfully and knowingly, as I explained
2 those terms in connection with count 1.
3

4 A few moments ago I told you that count 1
5 charges each defendant with aiding and abetting a bank
6 robbery by force, violence and intimidation, and count 2
7 charges each defendant with aiding and abetting others
8 in assaulting or putting in jeopardy the lives of others
9 while committing such offense.

10 In order to convict on count 1 or count 2,
11 you must find beyond a reasonable doubt that the crime
12 charged did occur as I have just explained.

13 I will now instruct you as to the standard
14 you must apply in determining whether the defendant
15 aided and abetted the commission of a crime.

16 First, the statute, Section 2 of Title 18,
17 United States Code, in part (a), another federal
18 statute, states, "Whoever commits an offense against the
19 United States, or aids, abets, counsels, commands,
20 induces or procures its commission" -- and I now
21 interpolate -- is guilty of a crime.

22 While there is no precise rule as to what
23 acts constitute aiding and abetting, it is enough that
24 a defendant in some manner associate himself with the
25 illegal venture, that he participate in it as something

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2 that he wishes to bring about or that he seeks by his
3 actions to make it succeed.

4 The one who aids and abets another in the
5 commission of a crime is equally guilty with the person
6 who actually and physically committed it. Therefore,
7 if you find beyond a reasonable doubt with respect to
8 counts 1 and 2 of the indictment that the defendant you
9 are considering committed the offenses charged, or aided
10 and abetted others in their commission, you may find
11 the defendant guilty of the offense.

12 I turn now to another subject, the credibility
13 of witnesses.

14 How do you determine the truth, and how do
15 you appraise the credibility of the witnesses?

16 Well, as I always tell juries who sit
17 here as you are sitting here today, you use your plain,
18 everyday common sense. You have seen the witnesses.
19 You have observed the manner they testified. And whatever
20 credibility you may give them must be determined by
21 their conduct and their manner of testifying and their
22 relationship or interest in the outcome.

23 In other words, you again apply your common
24 sense and your everyday experience.

25 You may, of course, take into consideration

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the interest of a witness. An interested witness is not necessarily unworthy of belief. Interest is a factor, however, which you may consider in determining the weight and credibility to be given to a witness' testimony.

If any witness has wilfully testified falsely to any material fact, you may disregard all of that witness' testimony or accept such part of it as you believe worthy of belief, or as appeals to your reason or judgment.

A witness may be discredited or impeached by contradictory evidence or by evidence that at other times the witness has made statements which are inconsistent with the witness' present testimony.

If you believe that any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such weight, if any, as you may think it deserves.

There has been testimony that both defendants made certain statements when interviewed by agents of the FBI. You will recall there was testimony that Mr. London was interviewed on August 29, 1975, and that Mr. Watson was interviewed on November 13 and 14, 1975.

If you find that the defendants did make such statements, then you may give the statements such

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2 weight as you believe they deserve after considering all
3 the circumstances which were brought out in the evidence.

4 You will recall that William Neumann and
5 Melvin Jeter were called as Government witnesses and
6 were asked to express, and did in fact express, their
7 opinion that one of the men depicted in Government's
8 Exhibit 15, I believe, was Willie London. These witnesses,
9 both of whom had seen Mr. London on a number of occasions,
10 were allowed to testify as to their opinions because
11 such testimony may be helpful to determination of a
12 fact in issue in this case, that is, whether Mr. London
13 is the man depicted in Government's Exhibit 15.

14 However, as I instructed you when this
15 testimony was admitted, the opinions expressed are purely
16 advisory and you may give them whatever weight you feel
17 they merit.

18 The final factual determination, as with all
19 factual determinations, rests with you.

20 Turning to another subject, direct and
21 circumstantial evidence, you have heard me refer to
22 direct evidence and perhaps also to circumstantial
23 evidence, and it is well to explain now the difference
24 between these two types of evidence.

25 Direct evidence is where a witness testifies

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2 as to what he saw, heard or observed, what he knows
3 of his own knowledge, something which comes to him by
4 virtue of his own senses.

5 Circumstantial evidence is evidence of
6 facts and circumstances from which one may infer
7 connected facts which reasonably follow in the common
8 experience of mankind.

9 Stated somewhat differently, circumstantial
10 evidence is that evidence which tends to prove a disputed
11 fact by proof of other facts which have a logical
12 tendency to lead the mind to a conclusion that those
13 facts exist which are sought to be established.

14 Circumstantial evidence, if believed, is of
15 no less value than direct evidence for, in either case, you
16 must be convinced beyond a reasonable doubt of the guilt
17 of the defendant.

18 Let's take one simple example, one which is
19 often used in this courthouse to illustrate what is
20 meant by circumstantial evidence.

21 We will assume, as is the fact, that when
22 you entered the courthouse this afternoon the sun was
23 shining brightly outside, it was a clear day, there
24 was no rain. Assume that in this courtroom the Venetian
25 blinds are down and the drapes -- or let's assume that

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2 there are lrape on the windows and that they are closed
3 so that you cannot look outside.

4 Assume that you are sitting in your jury box
5 and, despite the fact that it was clear and dry when you
6 entered the building, somebody walks in the door of the
7 courtroom carrying an umbrella dripping water, followed
8 in a short time by a second person wearing a raincoat
9 and the raincoat appears wet nad it is also dripping water.

10 Taking our assumptions, you cannot look out
11 the windows to see whether it is raining or not, and
12 if you are asked, "Is it raining?", you cannot say you know
13 directly of your own knowledge and observation, but,
14 certainly, upon the combination of facts as I have given
15 them, even though when you entered the building it was
16 not raining outside, it would be reasonable and logical
17 for you to conclude that it is raining now.

18 That is about all there is to circumstantial
19 evidence. You infer on the basis of reason and experience
20 from an established fact the existence of some further
21 fact.

22 On another subject: The defendants have
23 chosen not to take the witness stand and testify in
24 their own behalf. There are many reasons why a defendant
25 may decide not to testify. You should not speculate as to

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2 why the defendants did not testify. You may not draw any
3 inference whatsoever from anyone's not taking the stand
4 and testifying.

5 Under your oath as jurors, you cannot allow
6 a consideration of the punishment which may be inflicted
7 upon a defendant, if convicted, to influence your verdict
8 in any way or in any sense enter into your deliberations.
9 The duty of imposing sentence rests exclusively upon
10 the Court.

11 Your function is to weigh the evidence in
12 the case and to determine the guilt or innocence of
13 each defendant separately, solely on the basis of such
14 evidence and the law.

15 The trial in this case has involved charges
16 against Louis Kenneth Watson, contained in one indictment,
17 and similar charges against Willie London, contained in
18 another. In the determination of innocence or guilt
19 of Mr. Watson and Mr. London, you must bear in mind that
20 guilt is personal. The guilt or innocence of a defendant
21 on trial before you must be determined separately with
22 respect to him, solely on the evidence presented against
23 him, or lack of evidence. The case of each defendant
24 stands or falls upon the proof or lack of proof of the
25 charge against him, and not against somebody else.

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If you find that a defendant is guilty beyond a reasonable doubt of any of the crimes alleged in the indictment which charges him with crimes, a verdict of guilty as to that count should be returned as to that defendant. The guilt or innocence of any one defendant of any of the crimes charged should not influence your verdict regarding the other defendant.

You may find either one, or both, or neither one of the defendants guilty. You may find one or the other or both of the defendants not guilty.

In order to find a defendant guilty, you must find that the Government has proved each and every element of the charges against that defendant beyond a reasonable doubt.

You are to decide the case upon the evidence and the evidence alone, and you must not be influenced by any assumption, conjecture or sympathy or any inference not warranted by the facts until proven to your satisfaction.

When you go into the jury room, there will be twelve of you going in. There are twelve people who will deliberate as jurors in this case. Any verdict must be the unanimous verdict of all of you.

I will point out, however, that no one should enter upon the deliberations in the jury room with

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2 such pride of opinion that he or she would refuse to
3 change it if convinced by intelligent argument on the
4 part of another juror or jurors that they are wrong.

5 However, you are not to do violence to your
6 own well-founded opinions and common sense. You will
7 be taking your good common sense into the jury room.
8 I expect that when you come out of the jury room your
9 good common sense will accompany you.

10 You are entitled, each of you, to your
11 opinion. In other words, each of you must decide the
12 case for himself or herself after thoroughly reviewing
13 the evidence and exchanging views with your fellow
14 jurors.

15 After you have exchanged your views, you
16 should consider each defendant separately and each count
17 separately, and vote guilty or not guilty first as to one
18 defendant on count 1, then on count 2; then as to the
19 other defendant on count 1 and count 2. The vote will be
20 kept by Miss Bertaline Allen, who, as is the custom in this
21 court, which calls for the juror seated in seat one to
22 be the foreman or forelady, will be your forelady. She
23 will take the tally and she will report out the verdict
24 when, as and if you have reached a unanimous decision.

25 Ladies and gentlemen, I have completed my

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2 charge. However, before sending you to deliberate, I
3 will see counsel at the side bar.

4 (At the side bar)

5 THE COURT: Are there any exceptions? Mr.
6 Bentley.

7 MR. BENTLEY: None whatsoever.

8 THE COURT: Are there any exceptions, Mr.
9 Jacobs?

10 MR. JACOBS: No, your Honor.

11 THE COURT: Are there any exceptions, Mr.
12 Fractenberg?

13 MR. FRACTENBERG: No.

14 THE COURT: Are there any requests for
15 supplementary instructions, Mr. Bentley?

16 MR. BENTLEY: None from the Government.

17 THE COURT: Any requests for supplementary
18 instructions, Mr. Jacobs?

19 MR. JACOBS: None, your Honor.

20 THE COURT: Are there any requests for
21 supplementary instructions, Mr. Fractenberg?

22 MR. FRACTENBERG: No, your Honor.

23 THE COURT: Very well.

24 I will, as is my custom, inquire as to the
25 health of the jurors and if they say that they are fit and

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2 whether they operate a correctional institution at
3 Graterford or a penal institution in Philadelphia. It
4 seems to me that the writ issued from this Court was
5 lodged at Graterford. The defendant could not be produced.
6 That was his permanent Pennsylvania residence at that
time.

8 It seems to me that the Government, in causing
9 the writ to be lodged at his permanent residence, had
10 done what might be called acting with due diligence.

11 If anyone wants to comment, I will hear you.
12 However, I am prepared to rule.

13 MR. JACOBS: Nothing further to add, your
14 Honor.

15 THE COURT: The Court has considered the
16 defendant's motion to dismiss the indictment for a
17 violation of the interim plan of this district which
18 requires a trial within a six-month period; actually,
19 which requires the Government to be ready for trial within,
20 as I understand it, a six-month period, within six months
21 of the date of arrest, as is indicated in Rule 5.

22 Since the arrest here was by state authorities,
23 the Court concludes that the six-month period could
24 begin to run, at the earliest, on December 4, 1975, and
25 according to the Court's view of the proof, specifically

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2 the testimony of Edward G. Dennis, Jr., a United States
3 Attorney for the Eastern District of Pennsylvania,
4 the Court has determined that the negotiations which were
5 in progress on December 4 for a Rule 20 disposition
6 terminated on December 12, 1975. Thus, as the Court
7 construes the plan, the six-month period began running
8 on December 12, 1975. This would have meant that the
9 Government was required to be ready for trial by June 12,
10 1976, if there were no exclusions as that term is defined
11 in Rule 6, particularly Rule 6(a) and (d).

12 The Court finds that there was an exclusion
13 for the period March 29 through April 14, 1976. A
14 writ of habeas corpus ad prosequendum had been issued in
15 this district on March 26, 1976. The writ was lodged
16 at the Graterford Correctional Institution in Pennsylvania
17 where the defendant had begun serving a state term. At or
18 about the time it was lodged at Graterford, and specifically
19 on March 29, 1976, the defendant was removed to Philadelphia
20 to face other state charges. He appeared in court in
21 connection with those charges on March 29, at which time
22 his attorney failed to appear. On March 30, his attorney
23 did appear and requested a jury trial. The case was sent
24 to a backup part and was held awaiting trial in
25 Philadelphia. The defendant remained in Philadelphia

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2 until April 14, at which time he was returned to Graterford.

3 The Court has concluded that the period from
4 March 29 to April 14 must be excluded under Rule 6(a),
5 since the Court has concluded that the defendant was
6 awaiting trial of other charges during that period.

7 The Court would also add that, under Rule 6(d),
8 the Government acted, at least at that point in time,
9 with due diligence, but that the defendant's presence could
10 not be obtained during the period March 29 through April 14,
11 with due diligence, since he was in Philadelphia during
12 that period awaiting trial on other state charges.

13 The exclusion of this period of some sixteen
14 days has led the Court to conclude that even starting
15 the six-month period on December 4, 1975 and ending it
16 on June 16, 1976 results in the Court's holding that the
17 Government has complied with the six-month requirement of
18 the interim plan of this district.

19 Accordingly, the defendant's motion to dismiss
20 the indictment is denied. It is so ordered.

21 Is there anything that either counsel would
22 wish to add at this time?

23 MR. BENTLEY: I don't know if the record is
24 clear. There was another branch of this motion based on
25 the interstate agreement on detainers. I know the Court

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2 THE COURT: And 111 and 112; is that correct?

3 MR. BENTLEY: That's correct, your Honor.

4 THE COURT: All right.

5 Let me just be sure that the material here
6 is all in evidence.

7 (Pause)

8 Miss Kruger, would you give the enumerated
9 exhibits to the marshal.

10 THE CLERK: Yes, sir.

xxx

11 (Court's Exhibit No. 1 was marked.)

12 (Recess)

13 (At 5:00 p.m., two notes were received from
14 the jury.)

15 (In open court; jury not present)

16 THE COURT: We have just received two notes
17 from the jury, which I had marked Court's Exhibits 2 and 3
18 for identification, respectively.

xx

19 (Court's Exhibits Nos. 2 and 3 were marked.)

20 THE COURT: Reading 2 first:

21 "Like to hear what Mr. Watson's lawyer had
22 to say about the picture exhibit GX-97, and FBI testimony
23 by Mr. Lorenzetti on Mr. Watson's exhibit GX97."

24 The comments of counsel are not evidence
25 and, therefore, of course, I cannot comply with that portion

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2 of the jury's request and will so advise them.

3 MR. JACOBS: Your Honor, can we be heard on
4 that? I have had this before, your Honor.

5 THE COURT: So have I. The matter is closed.
6 There is no support for that whatsoever, unless the
7 Government consents.

8 Does the Government consent?

9 MR. BENTLEY: No, we do not.

10 THE COURT: Very well.

11 There is no support for that at all. I have
12 been through that and I think I am as familiar with it as
13 you are.

14 Needless to say, if you have support from
15 the Second Circuit which authorizes such a request to be
16 honored, I will hear you and you can cite the case.

17 MR. JACOBS: My only support, your Honor, is
18 a case I tried before Chief Judge Mischler in the Eastern
19 District where he permitted it.

20 THE COURT: Yes, and I have permitted it, too.
21 But it's a matter of discretion, certainly not of right.
22 And the Government has indicated that they do not consent.

23 I exercise my discretion. I will not have
24 the statements of counsel which are not evidence read to
25 the jury.

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